

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1242 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DEVRAJBHAI BHANABHAI

BAKADIYAWALA

Versus

TRUSTEES OF SUNNI MUSLIM JAMAT-YUNUSBHAI JAMALBHAI KURESHI&7

Appearance:

MR SURESH M SHAH for Petitioner

MR YN RAVANI for Respondent No. 1, 2, 3, 4, 5, 6, 7, 8

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 15/01/98

ORAL JUDGEMENT

R u l e.

This Revision Application is filed against the order of Asstt.Judge, Bhavnagar, Camp: Mahuva dated 14.8.1997 whereby the learned Judge accepted the appeal and granted injunction below Exh.5 which was declined by Civil Judge (J.D.), Savarkundla.

2. The plaintiff filed suit for declaration and injunction alleging therein that the suit premise let out to defendant-Pragjibhai Patel, has been sub-let to defendant-petitioner-Devrajibhai Bhanabhai Bakadiyawala, who is carrying on the business of manufacturing trailors for tractors in the said premises. Along with the suit, an application Exh.5 was filed seeking injunction to restrain the defendant from carrying on the business as the same is causing nuisance. Application below Exh.5 was rejected by the trial court. Appeal against the said order was preferred by the plaintiff. The learned Appellate Court, by the impugned order, granted injunction restraining the alleged sub-tenant not to carry on business thereon.

2. I have heard the learned Advocate for the parties. It is contended by Mr S M Shah, learned Advocate for the petitioner that the first Appellate Court has committed error in rejecting the defence of the petitioner that he was not a sub-tenant but a partner in the firm of the original tenant. It is also submitted that the effect of granting injunction amounts to closure of the entire business. On the other hand, it is contended by Mr Y N Ravani, learned Advocate for the respondents that the impugned order does not call for any interference in exercise of powers under section 115 of the Civil Procedure Code.

3. In my view, the learned Judge has committed material illegality in exercise of jurisdiction in granting the interim relief which amounts to acceptance of the suit. The defence plea has been rejected on unsustainable ground.

4. In view of the aforesaid, this Revision Application is allowed and the order of the learned Extra Asstt. Judge, Bhavnagar, Camp: Mahuva, dated 14.8.1997 is hereby quashed and set aside. It will however, be open for the plaintiff or any of the parties to move to the trial court inviting attention with respect to the nuisance alleged to have been created by the defendant and to regulate timings for the running of the business. If such an application is made, the same shall be decided promptly. It goes without saying that the defendant will not transfer or alienate the suit premises during the pendency of the suit.

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msp